U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC-00-214-50714 Office: Vermont Service Center Date: JAN 06 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Hayward

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks to employ the beneficiary as a senior systems analyst. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not qualify as an advanced degree professional.

On appeal, counsel asserts that two credential evaluation firms have concluded that the beneficiary has the equivalent of a bachelor's degree.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level.

8 C.F.R. 204.5(k)(2) permits the following substitution for an advanced degree:

> A United States baccalaureate degree or *a foreign equivalent degree* followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

(Emphasis added.) The petitioner claims that the beneficiary has the equivalent of a baccalaureate degree plus at least five years of progressive experience. The petitioner initially submitted the beneficiary's bachelor of science in physics degree (a three-year degree) issued by the University of Bombay, a diploma from the Datamatics Institute of Management, and an evaluation from the International Education Evaluations, Inc. As noted by the director, the evaluation provides the following information regarding the beneficiary's education history:

> It is noted that one year of Indian college or university education equates to one year in the United States. . . .
>
> [The beneficiary] presents from India the Bachelor of Science (Physics) degree and the Post Graduate Diploma in Computer Science. The *combination* of these two awards equates fully to the U.S.A. Bachelor of Science degree in Computer Science with a minor in Physics.

(Emphasis added.) In response to the director's request for additional documentation, the petitioner submitted a new evaluation from the Washington Evaluation Service. This evaluation states:

> The candidate's bachelor degree is considered to be academically equivalent to a Bachelor of Science in Physics with a second major in Computer in Science as awarded by an accredited U.S. university. Admission to this program required the equivalent to a high school diploma.
>
> [The beneficiary's] post graduate diploma in computer science is academically equivalent to a second major in computer science as required by an accredited U.S. university.

Based on these evaluations, the director concluded that the beneficiary did not have a foreign degree that, in and of itself, was equivalent to a U.S. baccalaureate degree. The director stated that there is no regulation that provides for the substitution of a four-year bachelor's degree with a three-year degree plus a one-year postgraduate degree. On appeal, counsel argues that while previous decisions from this office only precluded combining education and experience from being considered an equivalent degree, the petitioner in this case has provided two academic evaluations concluding that the beneficiary's education is equivalent to a U.S. bachelor's degree.

Matter of Sea, Inc., 19 I&N 817 (Commissioner 1988), provides:

> This Service uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

As stated above, the beneficiary must have a degree that is the equivalent of a U.S. baccalaureate degree. A combination of degrees which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree does not meet the regulatory requirement of a foreign equivalent degree. The initial evaluation clearly concluded that the beneficiary's "combination" of degrees was equivalent to a U.S. bachelor's degree. It did not conclude that the beneficiary's three-year degree was equivalent to a U.S. bachelor's degree, stating instead that one year of at an Indian college was equivalent to one year at a U.S. college. The second evaluation is ambiguous. While the first sentence quoted above seems to imply that the beneficiary's bachelor's degree is, in and of itself, equivalent to a U.S. bachelor's degree in physics with a second major in computer science, the second paragraph asserts that it is the beneficiary's one year of post graduate work that is the equivalent of the computer science second major. Thus, the conclusion in the first paragraph appears to be considering both degrees. Regardless, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). Thus, even if the second evaluation is concluding that the beneficiary's three-year bachelor's degree is equivalent to a U.S. bachelor's degree, the petitioner has not resolved the inconsistency between this conclusion and the opposite conclusion in the first evaluation.

In light of the above, we concur with the director that that the beneficiary does not have the equivalent of a U.S. baccalaureate degree. As such, the beneficiary's subsequent work experience cannot be considered post-baccalaureate experience equivalent to an advanced degree. Thus, the beneficiary is not an advanced degree professional as defined in the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.